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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

JOEL C. SCHIEFFER,  
  
Plaintiff and Appellant,

v.

GEORGE VALVERDE, as Director, etc.,  
  
Defendant and Respondent.

2d Civil No. B211332  
(Super. Ct. No. 56-2007-00286644-CU-  
WM-VTA)  
(Ventura County)

Joel Schieffer appeals the judgment denying his petition for a writ of mandate to compel the Department of Motor Vehicles (DMV) to set aside the suspension of his driver's license. (Veh. Code, § 13353.2, subd. (a).)<sup>1</sup> He contends that he was unlawfully detained and arrested and, therefore, breath test evidence of his intoxication was erroneously admitted. We affirm.

**FACTS AND PROCEDURAL HISTORY**

On October 21, 2006, Schieffer drove a truck into the parking lot of a Ralph's supermarket in Newbury Park. At the time, California Highway Patrol (CHP) officers were conducting a felony pursuit and arrest. As part of their official duties in connection with the pursuit and arrest, CHP officers, including Officer Woods, were standing in the same traffic lane that Schieffer was using. As Schieffer approached the

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<sup>1</sup> All statutory references are to the Vehicle Code.

scene of the stop, Officer Woods blocked his path to prevent his driving towards the scene of an active felony arrest. Schieffer stopped and Officer Woods, who was redirecting traffic away from the scene, contacted Schieffer who rolled down his car window.

Officer Woods asked CHP Officer McIntosh for assistance in conducting an investigation of Schieffer's driving. Officer McIntosh testified that he observed Schieffer's truck approaching from more than 100 feet prior to the stop. Appellant was subsequently arrested for driving under the influence of alcohol or drugs. (§ 23152.) A breath test taken after the arrest showed a blood alcohol content of 0.15 and 0.14.

At the DMV administrative hearing, Schieffer argued that Officer Woods and another officer were blocking the road for the purpose of conducting driving under the influence (DUI) investigations, not as part of the nearby felony arrest, and that Woods had no lawful basis to stop Schieffer's vehicle. Accordingly, Schieffer argued, all evidence obtained after the stop should have been excluded as the product of an unlawful detention. The hearing officer ruled that Schieffer had been lawfully detained and arrested, and ordered suspension of his driver's license for one year.

Schieffer then petitioned the trial court for a writ of mandate ordering the reinstatement of his driver's license making the same contentions as he made in the administrative hearing. The trial court denied the writ.

## DISCUSSION

Schieffer contends the CHP officers had no probable cause to detain or arrest him because he was driving legally and safely through the parking lot. As a result, he argues, evidence of the breath test administered by the officers should have been excluded as fruit of an unlawful detention. We disagree.

In ruling on a petition for a writ of mandate following a DMV license suspension order, the trial court must exercise its independent judgment to determine whether the weight of the evidence supports the administrative decision. (*Lake v. Reed* (1997) 16 Cal.4th 448, 456-457.) In so doing, the party challenging the decision has the burden of showing that the findings are contrary to the weight of evidence. (*Fukuda v.*

*City of Angels* (1999) 20 Cal.4th 805, 816-817.) On appeal, we determine whether the trial court's factual findings are supported by substantial evidence and independently review the court's legal determinations. (*Lake*, at pp. 456-457.) Here, substantial evidence supports the trial court's findings that the detention and arrest were lawful and, therefore the breath test evidence was properly admitted at the DMV hearing.

A person's driving privilege may be suspended or revoked if, after being "lawfully arrested" for driving under the influence, the person is found to have a blood-alcohol concentration of 0.08 percent or greater. (§ 13557; *Gikas v. Zolin* (1993) 6 Cal.4th 841, 846-847.) "A prerequisite to a lawful arrest is a lawful detention." (*Gikas*, at p. 873, fn. 5.) A detention is lawful if the detaining officer points to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 231; *United States v. Arvizu* (2002) 534 U.S. 266, 273.)

Schieffer's claim that his driving in the shopping center parking lot could not create a reasonable suspicion of criminal activity mischaracterizes the circumstances of his detention. The DMV does not argue that the CHP officers had reasonable suspicion that Schieffer was intoxicated when he drove up to where Officer Woods was standing, and there was no detention at that time.

The encounter occurred as officers were protecting a felony arrest scene. The evidence shows that Officer Woods was directing traffic away from the scene to prevent interference by motorists and for officer and motorist safety. Evidence shows that his act of stopping his vehicle and rolling down the window was voluntary and consensual. This consensual encounter with Officer Woods was not a detention because Schieffer's liberty was not restrained. (*Florida v. Bostick* (1991) 501 U.S. 429, 434; *People v. Garry* (2007) 156 Cal.App.4th 1100, 1106.)

There is no detention when a police officer approaches an individual and asks a few questions, provided a reasonable person would feel free to disregard the police. (*Florida v. Bostick*, *supra*, 501 U.S. at p. 434; see *People v. Hughes* (2002) 27

Cal.4th 287, 328.) Here, there is no evidence that Officer Woods did more than stand in the road and shine his flashlight into Schieffer's vehicle.

Schieffer was detained only after he rolled down his window. At that point, officers could form a reasonable suspicion that he was driving under the influence of alcohol based on their observation of symptoms of intoxication. Substantial evidence supports such a finding, and Schieffer does not argue to the contrary. Instead, Schieffer asserts without any evidentiary support that Officer Woods was engaged in a DUI investigation from the inception of the encounter.

We conclude that the detention and ensuing arrest were lawful. The evidence of appellant's breath test was properly admitted.

The judgment denying the writ of mandate is affirmed. Costs to respondent.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Barry Klopfer, Judge<sup>\*</sup>  
Superior Court County of Ventura

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Steve Pell for Appellant.

Edmund G. Brown Jr., Attorney General, Alicia M. B. Fowler, Senior Assistant Attorney General, Elizabeth Hong, Supervising Deputy Attorney General, Martin H. Milas, Leah C. Gershon, Deputy Attorneys General, for Respondent.

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<sup>\*</sup> (Retired Judge of the Ventura Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)